IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B.CRIMINAL MISC. PETITION NO. 1442/2006
(Bhagwati Prasad Vs. State of Rajasthan)

(2) S.B.CRIMINAL MISC. PETITION NO. 1443/2006
(Bhagwati Prasad Vs. State of Rajasthan)

Date of Order : 10/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Rakesh Arora for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Issue notice for final disposal. Learned public prosecutor accepts notice on behalf of non-petitioner State.

Both these petitions involve common question of law and facts and therefore, with the consent of learned counsel for the parties, they are heard and decided together at the admission stage.

These criminal misc. petitions under Section 482 Cr.P.C. are directed against the order dated 12.10.2006 passed by Additional Sessions Judge (Fast Track) No.3, Jodhpur (for short 'the revisional court' hereinafter) in Criminal Revisions No.20/06 and 21/06 whereby both the revisions filed by the petitioner against the order dated 8.2.2006 passed by Additional

Chief Judicial Magistrate No.3, Jodhpur (for short 'the trial court' hereinafter) in Criminal Cases No.65/05 and 66/05, were dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the trial court as well as by the revisional court.

The petitioner is facing trial in aforesaid two criminal cases for the offences under Sections 409, 468, 471 and 120-B IPC. During pendency of the trial of the case, the prosecution filed an application under Section 311 Cr.P.C. seeking to summon the witnesses i.e. Judicial Magistrate and retd. Sessions Judge in whose presence the specimen handwriting and the signature of the petitioner were taken, Assistant Sub-Inspector who identified the petitioner as also to prove the admitted handwriting of the petitioner two persons Rajeshwar Bhatia and K.S.Shehawat.

By well reasoned and detailed orders, the trial court allowed the applications filed by the prosecution. The orders passed by the trial court came to be challenged by the petitioner before the revisional Court and the revisional court dismissed the revision petitions on the ground that the statements of witnesses sought to be summoned by the prosecution appear to be essential to the just decision of the case. On careful perusal of the orders passed by the courts below, in my view, the trial court

was justified in recalling the witnesses.

The only point agitated by learned counsel for the petitioner is that the witnesses have been summoned at a belated stage when the matter was posted for final arguments.

Section 311 Cr.P.C. Provides that any court may, at any stage of inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

In Mohan Lal Shamji Soni Vs. Union of India & ors., AIR 1991 (suppl.1) 271 Hon'ble Supreme Court held as under :-

> "The very usage of the words such as 'any court', 'at any stage' or 'of any enquiry, trial or other proceedings', 'any person and any such person', clearly spells out that this section is expressed in the widest possible terms and do not limit the discretion of the court in any way. However, the very width requires a corresponding caution that the discretionary power should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow for any discretion but it binds and compels the court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case."

I In Rajendra Prasad Vs. Narcotic Cell through its

Officer-In-charge, Delhi, AIR 1999 SC 2292, the Hon'ble Apex Court held as under:-

> " Lacuna in the prosecution case must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not count errors committed by the parties or to find out and declare who among the parties performed better."

In Mahipal Vs. State of Rajasthan 2001 (2) RCC 858 this Court held that it is clear that under Sec. 311 of the Code, the Criminal Court has ample power at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness, or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined and if the criminal Court is of the opinion that the evidence of such person appears to be essential to the just decision of the case, the Court has ample power to summon such witness so long as Court retains seisin of proceedings without qualifying limitation or prohibition, needless to say, inquiry or trial comes to an end when the order or judgment is pronounced, until the Court has power to use provisions of Sec. 311 of the

Code.

In this view of the matter, in my view the trial court was justified in allowing the application and summoning the witnesses and the revisional court was also justified in affirming the order of the trial court.

I do not find any merit in both the petitions. The petitions are therefore, dismissed.

(H.R.PANWAR),J.

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